

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1553 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new paragraph
- 2 and insert:
- 3 "SECTION 1. IC 6-3-7-5 IS AMENDED TO READ AS FOLLOWS
- 4 [EFFECTIVE JULY 1, 2001]: Sec. 5. (a) As used in this section,
- 5 "independent contractor" refers to a person described in
- 6 IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5).
- 7 (b) As used in this section, "person" means an individual, a
- 8 proprietorship, a partnership, a joint venture, a firm, an
- 9 association, a corporation, or other legal entity.
- 10 (c) An independent contractor who does not make an election
- 11 under:
- 12 (1) IC 22-3-6-1(b)(4) or IC 22-3-6-1(b)(5) is not subject to the
- 13 compensation provisions of IC 22-3-2 through IC 22-3-6; or
- 14 (2) IC 22-3-7-9(b)(2) or IC 22-3-7-9(b)(3) is not subject to the
- 15 compensation provisions of IC 22-3-7;
- 16 and must file a statement with the department with supporting
- 17 documentation of independent contractor status and obtain a
- 18 certificate of exemption under this section.
- 19 (d) An independent contractor shall file with the department, in
- 20 the form prescribed by the department, a statement providing the
- 21 following information:
- 22 (1) The independent contractor's name, trade name, address,
- 23 and telephone number.
- 24 (2) The independent contractor's federal identification

number or Social Security number.

(3) The name and:

(A) Social Security number;

(B) federal employer identification number (FEIN); or

(C) taxpayer identification number (TIN);

of each person or entity with whom the independent contractor has contracted.

(e) Along with the statement required in subsection (d), an independent contractor shall file annually with the department documentation in support of that status before being granted a certificate of exemption. The documentation must include at least three (3) of the following items:

(1) Documentation of the legal entity under which the independent contractor conducts business.

(2) Proof of payment of, or non-liability for, self-employment taxes.

(3) Proof of payment of quarterly estimated taxes for the current year.

(4) Proof of payment of unemployment taxes for the current year.

(5) Other documentation establishing an independent contractor's status, such as contracts, unreimbursed business expenses, or proof of liability insurance coverage.

(f) An independent contractor shall pay a filing fee of five dollars (\$5) with the statement required in subsection (d). The fees collected under this subsection shall be deposited into a special account in the state general fund known as the independent contractor information account. Money in the independent contractor information account is annually appropriated to the department for its use in carrying out the purposes of this section.

(g) The department shall keep each statement and supporting documentation received under this section on file and on request may verify that a certificate of exemption is on file.

(h) The certificate of exemption required by this section must be on a form prescribed and provided by the department. A certificate issued under this section is valid for one (1) year. The department shall maintain the original certificate on file.

(i) A certificate of exemption must certify the following information:

(1) That the independent contractor has worker's compensation coverage for the independent contractor's employees in accordance with IC 22-3-2 through IC 22-3-7.

(2) That the independent contractor desires to be exempt from being able to recover under the worker's compensation policy or self-insurance of a person for whom the independent contractor will perform work only as an independent contractor.

(j) The department shall provide the certificate of exemption to the person requesting it not less than seven (7) business days after verifying the accuracy of the supporting documentation. To be given effect, a certificate of exemption must be filed with the worker's compensation board of Indiana accordance with IC 22-3-2-14.5(f) and IC 22-3-7-34.5(g).

(k) Not more than thirty (30) days after the department receives a copy of an independent contractor's statement and validated affidavit from the worker's compensation board under IC 22-3-2-14.5 or IC 22-3-7-34.5, supporting documentation and issues a certificate of exemption, the department shall provide the independent contractor with an explanation of the department's tax treatment of independent contractors and the duty of the independent contractor to remit any taxes owed.

(l) The information received from an independent contractor's statement and validated affidavit supporting documentation is to be treated as confidential by the department and is to be used solely for the purposes of this section.

(m) A contractor who knowingly or intentionally causes or assists employees, including temporary employees, to file a statement and supporting documentation of independent contractor status commits a Class D felony."

Page 2, line 42, delete "supporting documentation of independent" and insert "the Indiana department of state revenue in accordance with IC 6-3-7-5".

Page 3, line 1, delete "contractor status".

Page 3, line 1, strike "validated affidavit" and insert "certificate".

Page 3, line 1, after "exemption" insert ".".

Page 3, line 1, strike "under".

Page 3, strike lines 2 through 9.

Page 3, delete lines 10 through 26.

Page 3, line 27, delete "(f)" and insert "(e) (d)".

Page 3, line 28, delete "twenty dollars (\$20)" and insert "fifteen dollars (\$15)".

Page 3, line 28, strike "statement required in" and insert "certificate filed under".

Page 3, line 29, strike "(d)." and insert "(f)".

Page 3, line 30, strike "as follows:".

Page 3, line 31, strike "(1)".

Page 3, line 31, delete "Eighty percent (80%)".

Page 3, run in lines 30 through 31.

Page 3, line 34, strike "(2)".

Page 3, line 34, delete "Twenty percent (20%)".

Page 3, line 34, strike "into a special".

Page 3, strike lines 35 through 39.

Page 3, line 40, delete "(g)" and insert "(e)".

- 1 Page 3, line 40, strike "keep each statement" and insert "**maintain**
- 2 **a data base consisting of certificates**".
- 3 Page 3, line 41, delete "and supporting documentation".
- 4 Page 3, line 41, strike "on file".
- 5 Page 3, line 42, strike "validated affidavit is on file." and insert
- 6 "**certificate was filed**".
- 7 Page 4, line 1, delete "(h)".
- 8 Page 4, line 1, strike "The affidavit of exemption required by this
- 9 section must be".
- 10 Page 4, strike lines 2 through 3.
- 11 Page 4, line 4, delete "(i)".
- 12 Page 4, line 4, strike "An affidavit of exemption must certify the
- 13 following".
- 14 Page 4, strike line 5 through 12.
- 15 Page 4, line 13, delete "(j)" and insert "**(f)**".
- 16 Page 4, line 13, strike "An affidavit" and insert "**A certificate**".
- 17 Page 4, line 14, strike "validate the affidavit" and insert "**indicate**
- 18 **that the certificate has been filed**".
- 19 Page 4, line 15, strike "affidavit" and insert "**certificate**".
- 20 Page 4, line 15, strike "validated" and insert "**stamped**".
- 21 Page 4, line 16, strike "executing the affidavit. A validated affidavit"
- 22 and insert "**filing the certificate. A certificate**".
- 23 Page 4, line 18, delete "of receipt" and insert "**file stamped**".
- 24 Page 4, line 19, strike "the original affidavits filed and validated by
- 25 the".
- 26 Page 4, strike line 20 and insert "**a data base containing the**
- 27 **information required in subsections (d) and (f)**".
- 28 Page 4, line 21, delete "(k)".
- 29 Page 4, line 21, strike "Not more than thirty (30) days after the
- 30 worker's".
- 31 Page 4, strike line 22.
- 32 Page 4, line 23, delete "documentation required by subsection (e),".
- 33 Page 4, line 23, strike "validated affidavit, and".
- 34 Page 4, strike lines 24 through 26.
- 35 Page 4, line 27, delete "(l)" and insert "**(g)**".
- 36 Page 4, line 29, strike "validated affidavit issued" and insert
- 37 "**stamped certificate of exemption filed**".
- 38 Page 4, line 30, strike "validated".
- 39 Page 4, line 31, strike "affidavit" and insert "**stamped certificate**".
- 40 Page 4, line 33, strike "validated affidavit" and insert "**stamped**
- 41 **certificate**".
- 42 Page 4, line 35, delete "(m)" and insert "**(h)**".
- 43 Page 4, line 35, strike "An affidavit validated" and insert "**A**
- 44 **stamped certificate filed**".
- 45 Page 4, line 38, strike "validated affidavit;" and insert "**stamped**
- 46 **certificate;**".

Page 5, line 2, strike "validated affidavit." and insert "**stamped certificate.**".

Page 5, delete lines 3 through 5, begin a new paragraph and insert:
 "SECTION 4. IC 22-3-7-34 IS AMENDED TO READ AS
 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 34. (a) **As used in this
 section, "person" does not include an owner who contracts for
 performance of work on the owner's owner occupied residential
 property.**

(b) Every employer bound by the compensation provisions of this chapter, except the state, counties, townships, cities, towns, school cities, school towns, school townships, other municipal corporations, state institutions, state boards, and state commissions, shall insure the payment of compensation to the employer's employees and their dependents in the manner provided in this chapter, or procure from the worker's compensation board a certificate authorizing the employer to carry such risk without insurance. While that insurance or certificate remains in force, the employer, or those conducting the employer's business, and the employer's occupational disease insurance carrier shall be liable to any employee and the employee's dependents for disablement or death from occupational disease arising out of and in the course of employment only to the extent and in the manner specified in this chapter.

~~(b)~~ (c) Every employer who, by election, is bound by the compensation provisions of this chapter, except those exempted from the provisions by subsection ~~(a)~~, (b), shall:

(1) insure and keep insured the employer's liability under this chapter in some corporation, association, or organization authorized to transact the business of worker's compensation insurance in this state; or

(2) furnish to the worker's compensation board satisfactory proof of the employer's financial ability to pay the compensation in the amount and manner and when due as provided for in this chapter.

In the latter case the board may require the deposit of an acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred.

~~(c)~~ (d) Every employer required to carry insurance under this section shall file with the worker's compensation board in the form prescribed by it, within ten (10) days after the termination of the employer's insurance by expiration or cancellation, evidence of the employer's compliance with subsection ~~(b)~~ (c) and other provisions relating to the insurance under this chapter. The venue of all criminal actions under this section lies in the county in which the employee was last exposed to the occupational disease causing disablement. The prosecuting attorney of the county shall prosecute all violations upon written request of the board. The violations shall be prosecuted in the name of the state.

~~(d)~~ **(e)** Whenever an employer has complied with subsection ~~(b)~~ **(c)** relating to self-insurance, the worker's compensation board shall issue to the employer a certificate which shall remain in force for a period fixed by the board, but the board may, upon at least thirty (30) days notice, and a hearing to the employer, revoke the certificate, upon presentation of satisfactory evidence for the revocation. After the revocation, the board may grant a new certificate to the employer upon the employer's petition, and satisfactory proof of the employer's financial ability.

~~(e)(1)~~ **(f)(1)** Subject to the approval of the worker's compensation board, any employer may enter into or continue any agreement with the employer's employees to provide a system of compensation, benefit, or insurance in lieu of the compensation and insurance provided by this chapter. A substitute system may not be approved unless it confers benefits upon employees and their dependents at least equivalent to the benefits provided by this chapter. It may not be approved if it requires contributions from the employees unless it confers benefits in addition to those provided under this chapter, which are at least commensurate with such contributions.

~~(e)(2)~~ **(f)(2)** The substitute system may be terminated by the worker's compensation board on reasonable notice and hearing to the interested parties, if it appears that the same is not fairly administered or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purpose of this chapter. On termination, the board shall determine the proper distribution of all remaining assets, if any, subject to the right of any party in interest to take an appeal to the court of appeals.

~~(f)(1)~~ **(g)(1)** No insurer shall enter into or issue any policy of insurance under this chapter until its policy form has been submitted to and approved by the worker's compensation board. The board shall not approve the policy form of any insurance company until the company shall file with it the certificate of the insurance commissioner showing that the company is authorized to transact the business of worker's compensation insurance in Indiana. The filing of a policy form by any insurance company or reciprocal insurance association with the board for approval constitutes on the part of the company or association a conclusive and unqualified acceptance of each of the compensation provisions of this chapter, and an agreement by it to be bound by the compensation provisions of this chapter.

~~(f)(2)~~ **(g)(2)** All policies of insurance companies and of reciprocal insurance associations, insuring the payment of compensation under this chapter, shall be conclusively presumed to cover all the employees and the entire compensation liability of the insured under this chapter in all cases in which the last day of the exposure rendering the employer liable is within the effective period of such policy.

~~(f)(3)~~ **(g)(3)** Any provision in any such policy attempting to limit or

1 modify the liability of the company or association insuring the same
2 shall be wholly void.

3 ~~(f)(4)~~ **(g)(4)** Every policy of any company or association shall be
4 deemed to include the following provisions:

5 "(A) The insurer assumes in full all the obligations to pay
6 physician's fees, nurse's charges, hospital supplies, burial
7 expenses, compensation or death benefits imposed upon or
8 accepted by the insured under this chapter.

9 (B) This policy is subject to the provisions of this chapter relative
10 to the liability of the insured to pay physician's fees, nurse's
11 charges, hospital services, hospital supplies, burial expenses,
12 compensation or death benefits to and for such employees, the
13 acceptance of such liability by the insured, the adjustment, trial
14 and adjudication of claims for such physician's fees, nurse's
15 charges, hospital services, hospital supplies, burial expenses,
16 compensation, or death benefits.

17 (C) Between this insurer and the employee, notice to or
18 knowledge of the occurrence of the disablement on the part of the
19 insured (the employer) shall be notice or knowledge thereof, on
20 the part of the insurer. The jurisdiction of the insured (the
21 employer) for the purpose of this chapter is the jurisdiction of this
22 insurer, and this insurer shall in all things be bound by and shall
23 be subject to the awards, judgments and decrees rendered against
24 the insured (the employer) under this chapter.

25 (D) This insurer will promptly pay to the person entitled to the
26 same all benefits conferred by this chapter, including all
27 physician's fees, nurse's charges, hospital services, hospital
28 supplies, burial expenses, and all installments of compensation or
29 death benefits that may be awarded or agreed upon under this
30 chapter. The obligation of this insurer shall not be affected by any
31 default of the insured (the employer) after disablement or by any
32 default in giving of any notice required by this policy, or
33 otherwise. This policy is a direct promise by this insurer to the
34 person entitled to physician's fees, nurse's charges, fees for
35 hospital services, charges for hospital services, charges for
36 hospital supplies, charges for burial, compensation, or death
37 benefits, and shall be enforceable in the name of the person.

38 (E) Any termination of this policy by cancellation shall not be
39 effective as to employees of the insured covered hereby unless at
40 least thirty (30) days prior to the taking effect of such
41 cancellation, a written notice giving the date upon which such
42 termination is to become effective has been received by the
43 worker's compensation board of Indiana at its office in
44 Indianapolis, Indiana.

45 (F) This policy shall automatically expire one (1) year from the
46 effective date of the policy, unless the policy covers a period of

three (3) years, in which event, it shall automatically expire three (3) years from the effective date of the policy. The termination either of a one (1) year or a three (3) year policy, is effective as to the employees of the insured covered by the policy."

~~(f)(5)~~ **(g)(5)** All claims for compensation, nurse's charges, hospital services, hospital supplies, physician's fees, or burial expenses may be made directly against either the employer or the insurer or both, and the award of the worker's compensation board may be made against either the employer or the insurer or both.

~~(f)(6)~~ **(g)(6)** If any insurer shall fail to pay any final award or judgment (except during the pendency of an appeal) rendered against it, or its insured, or, if it shall fail to comply with this chapter, the worker's compensation board shall revoke the approval of its policy forms, and shall not accept any further proofs of insurance from it until it shall have paid the award or judgment or complied with this chapter, and shall have resubmitted its policy form and received the approval of the policy by the industrial board.

~~(g)~~ **(h)** No policy of insurance covering the liability of an employer for worker's compensation shall be construed to cover the liability of the employer under this chapter for any occupational disease unless the liability is expressly accepted by the insurance carrier issuing the policy and is endorsed in that policy. The insurance or security in force to cover compensation liability under this chapter shall be separate from the insurance or security under IC 22-3-2 through IC 22-3-6. Any insurance contract covering liability under either part of this article need not cover any liability under the other.

~~(h)~~ **(i)** For the purpose of complying with subsection ~~(b)~~, **(c)**, groups of employers are authorized to form mutual insurance associations or reciprocal or interinsurance exchanges subject to any reasonable conditions and restrictions fixed by the department of insurance. This subsection does not apply to mutual insurance associations and reciprocal or interinsurance exchanges formed and operating on or before January 1, 1991, which shall continue to operate subject to the provisions of this chapter and to such reasonable conditions and restrictions as may be fixed by the worker's compensation board.

~~(i)~~ **(j)** Membership in a mutual insurance association or a reciprocal or interinsurance exchange so proved, together with evidence of the payment of premiums due, is evidence of compliance with subsection ~~(b)~~, **(c)**.

~~(j)~~ **(k)** Any person bound under the compensation provisions of this chapter, contracting for the performance of any work exceeding one thousand dollars (\$1,000) in value, in which the hazard of an occupational disease exists, by a contractor subject to the compensation provisions of this chapter without exacting from the contractor a certificate from the worker's compensation board showing that the contractor has complied with subsections ~~(a)~~, ~~(b)~~, and ~~(c)~~, **(b)**, **(c)**, and

(d), shall be liable to the same extent as the contractor for compensation, physician's fees, hospital fees, nurse's charges, and burial expenses on account of the injury or death of any employee of such contractor, due to occupational disease arising out of and in the course of the performance of the work covered by such contract.

~~(k)~~ (l) Any contractor who sublets any contract for the performance of any work to a subcontractor subject to the compensation provisions of this chapter, without obtaining a certificate from the worker's compensation board showing that the subcontractor has complied with subsections ~~(a)~~, ~~(b)~~, and ~~(c)~~; (b), (c), and (d), is liable to the same extent as the subcontractor for the payment of compensation, physician's fees, hospital fees, nurse's charges, and burial expense on account of the injury or death of any employee of the subcontractor due to occupational disease arising out of and in the course of the performance of the work covered by the subcontract.

~~(h)~~ (m) A person paying compensation, physician's fees, hospital fees, nurse's charges, or burial expenses, under subsection ~~(j)~~ (k) or ~~(k)~~; (l), may recover the amount paid or to be paid from any person who would otherwise have been liable for the payment thereof and may, in addition, recover the litigation expenses and attorney's fees incurred in the action before the worker's compensation board as well as the litigation expenses and attorney's fees incurred in an action to collect the compensation, medical expenses, and burial expenses.

~~(m)~~ (n) Every claim filed with the worker's compensation board under this section shall be instituted against all parties liable for payment. The worker's compensation board, in an award under subsection ~~(j)~~; (k), shall fix the order in which such parties shall be exhausted, beginning with the immediate employer and, in an award under subsection ~~(k)~~; (l), shall determine whether the subcontractor has the financial ability to pay the compensation and medical expenses when due and, if not, shall order the contractor to pay the compensation and medical expenses.

SECTION 5. IC 22-3-7-34.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 34.5. (a) As used in this section, "independent contractor" refers to a person described in IC 22-3-7-9(b)(5).

(b) As used in this section, "person" means an individual, a proprietorship, a partnership, a joint venture, a firm, an association, a corporation, or other legal entity.

(c) An independent contractor who does not make an election under IC 22-3-7-9(b)(2) or IC 22-3-7-9(b)(3) is not subject to the compensation provisions of this chapter and must file a statement and obtain a validated affidavit of exemption under this section.

(d) An independent contractor shall file with the ~~worker's compensation board~~, **Indiana department of state revenue**, in the form prescribed by the ~~worker's compensation board~~, **Indiana**

department of state revenue, a statement providing the following information:

(1) The independent contractor's name, trade name, address, and telephone number.

(2) The independent contractor's federal identification number or Social Security number.

containing the information required by IC 6-3-7-5 and obtain a certification of exemption.

(e) An independent contractor shall pay a filing fee in the amount of five dollars (\$5) **fifteen dollars (\$15)** with the statement required in **certificate filed under** subsection ~~(d)~~: (g). The fees collected under this subsection shall be deposited as follows:

(1) Fifty percent (50%) in the worker's compensation supplemental administrative fund **and shall be used for all expenses the board incurs.**

(2) Fifty percent (50%) into a special account in the state general fund known as the independent contractor information account. Money in the independent contractor information account is annually appropriated to the department of state revenue for its use in carrying out the purposes of IC 6-3-7-5.

(f) The worker's compensation board shall ~~keep each statement~~ **maintain a data base consisting of certificates** received under this section ~~on file and on request may verify that a validated affidavit is on file.~~ **certificate was filed.**

(g) The affidavit of exemption required by this section must be on a form prescribed and provided by the worker's compensation board. An affidavit issued under this section is valid for one (1) year.

~~(h) An affidavit of exemption must certify the following information:~~

~~(1) That the independent contractor has worker's compensation coverage for the independent contractor's employees in accordance with this chapter.~~

~~(2) That the independent contractor desires to be exempt from being able to recover under the worker's compensation policy or self-insurance of a person for whom the independent contractor will perform work only as an independent contractor.~~

~~(i) (g) An affidavit~~ **A certificate** of exemption must be filed with the worker's compensation board. The board shall ~~validate the affidavit~~ **indicate that the certificate has been filed** by stamping the affidavit **certificate** with the date of receipt and returning a **validated stamped** copy to the person ~~executing the affidavit.~~ **A validated affidavit filing the certificate. A certificate** becomes effective as of midnight ~~on the date received.~~ **seven (7) business days after the date file stamped by the worker's compensation board.** The board shall maintain the original affidavits filed and validated by the board: ~~a data base~~ **containing in information required in subsections (e) and (g).**

(j) Not more than thirty (30) days after the worker's compensation board receives an independent contractor's statement, validated affidavit, and filing fee required by this section, the worker's compensation board shall provide the department of state revenue with a copy of the statement and validated affidavit.

(~~k~~) (h) A person who contracts for services of another person not covered by this chapter to perform work must secure a copy of a validated affidavit issued **stamped certificate of exemption filed** under this section from the person hired. A person may not require a person who has provided a validated affidavit **stamped certificate** to have worker's compensation coverage. The worker's compensation insurance carrier of a person who contracts with an independent contractor shall accept a validated affidavit **stamped certificate** in the same manner as a certificate of insurance.

(~~h~~) An affidavit validated (i) A **stamped certificate filed** under this section is binding on and holds harmless for all claims:

(1) a person who contracts with an independent contractor after receiving a copy of the validated affidavit **stamped certificate**; and

(2) the worker's compensation insurance carrier of the person who contracts with the independent contractor.

The independent contractor may not collect compensation under this chapter for an injury from a person or the person's worker's compensation carrier to whom the independent contractor has furnished a validated affidavit. **stamped certificate."**

Page 5, line 7, delete "IC 22-3-2-14.5 (e)" and insert "**IC 6-3-7-5(e)**".

Page 5, line 9, delete "IC 22-3-2-14.5(j)" and insert "**IC 22-3-2-14.5(f) or IC 22-3-7-34.5(g)**".

Renumber all SECTIONS consecutively.

(Reference is to HB 1553 as printed February 9, 2001.)

Representative Lawson L